

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

LEE L. ELSEY, as Trustee of the LEE L. ELSEY
TRUST,

Defendant-Appellee.

UNPUBLISHED

May 10, 2005

No. 252173

Oakland Circuit Court

LC No. 00-021771-CC

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

LEE L. ELSEY, as Trustee of the LEE L. ELSEY
TRUST,

Defendant-Appellee.

No. 252174

Oakland Circuit Court

LC No. 00-021772-CC

Before: Griffin, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff Michigan Department of Transportation appeals as of right from a judgment, following a jury verdict, awarding defendant \$1.77 million as just compensation for property condemned by plaintiff for use in a highway construction project. The sole issue on appeal is whether the trial court erred in barring evidence of project benefits alleged by plaintiff to have offset the detrimental effects of the project alleged by defendant to have inured to the remainder of his property. Plaintiff argues, as it did below, that under MCL 213.70(2) there is no requirement that such benefits be expressly pleaded, as is required under MCL 213.73(2) for a claim of enhancement in value. Plaintiff requests that we interpret these statutes consistent with its argument and remand this matter for a new trial. However, for the

reasons that follow, we decline to reach the statutory question and affirm the judgment entered below.¹

First, plaintiff failed at trial to make an offer of proof establishing the substantive nature of the testimony alleged to have been improperly excluded. Pursuant to MRE 103(a)(2), the proponent of evidence excluded by the trial court must make an offer of proof to preserve the issue of the admissibility of the evidence for appeal. *Phinney v Perlmutter*, 222 Mich App 513, 529; 564 NW2d 532 (1997). As noted in Robinson, Longhofer & Ankers, Michigan Court Rules Practice, Evidence, § 103.4, p 26, an offer of proof “serves the dual purpose of informing the trial court of the nature and purpose of the evidence sought to be introduced, and of providing a basis for the appellate court to decide whether to sustain the trial court’s ruling.” In the absence of such an offer of proof, we are unable to properly determine whether exclusion of the testimony at issue here affected plaintiff’s substantial rights. MRE 103(a); see also *Phinney*, *supra*.

Second, the trial court itself did not reach the statutory question. Although recognizing that plaintiff had failed to allege project benefits in its pleadings, the trial court expressly indicated that its decision to exclude evidence regarding such benefits stemmed more from a consideration of “fairness” than a “jurisprudential analysis” of the statutes. It is well settled that the trial court has broad discretion to make evidentiary rulings conducive to the conduct of a fair and orderly trial, and that absent an abuse of that discretion a trial court’s ruling on an evidentiary issue will not be reversed on appeal. See *Chmielewski v Xermac, Inc*, 457 Mich 593, 613-614; 580 NW2d 817 (1998). Here, given plaintiff’s failure to allege such benefits in its pleadings, or to openly account for such benefits in its appraisal of the subject property, and considering that the trial court permitted testimony concerning the benefits of the highway project inuring to the area in general, we cannot say that the trial court abused its discretion by excluding evidence of project benefits directly inuring to the property at issue. *Id*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

¹ Plaintiff also argues that the trial court erred in its instruction regarding the jury’s consideration of such benefits when determining just compensation, but failed to raise this challenge in its statement of questions presented. Consequently, that issue is not properly preserved for our review. See MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995).